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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2009 JUN 30 P 2:36

AZ CORP COMMISSION
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Arizona Corporation Commission

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IN THE MATTER OF THE APPLICATION OF
JOHNSON UTILITIES, L.L.C., DBA JOHNSON
UTILITIES COMPANY FOR AN INCREASE IN
ITS WATER AND WASTEWATER RATES FOR
CUSTOMERS WITHIN PINAL COUNTY,
ARIZONA.

DOCKET NO. WS-02987A-08-0180

PROCEDURAL ORDER**BY THE COMMISSION:**

On March 31, 2008, Johnson Utilities, LLC, dba Johnson Utilities Company ("Johnson") filed with the Arizona Corporation Commission ("Commission") an application for increases in its water and wastewater utility rates.

On August 1, 2008, the Commission's Utilities Division ("Staff") filed a Letter of Sufficiency informing the Company that the application had met the Commission's sufficiency requirements and classifying the Company as a Class A utility.

On August 15, 2008, by procedural order, a hearing in this matter was scheduled to commence, public notice was ordered, and other filing dates were established.

On April 23, 2009, the hearing commenced as scheduled. Appearances were entered by Johnson, intervenors Swing First Golf, LLC (Swing First"), the Town of Florence ("Florence"), the Residential Utility Consumer Office ("RUCO"), and Staff. No members of the public appeared to provide public comment.

At the commencement of the third day of hearing, on Monday, April 27, 2009, counsel for Johnson informed the Commission that Swing First had informed counsel for Johnson over the weekend of the existence of a transcript of a recorded conversation between Swing First witness Mr. David Ashton and Johnson employee Mr. Gary Larson. Counsel for Johnson indicated that counsel for Swing First intended to offer the transcript into evidence, and requested that it be excluded. The Administrative Law Judge conducted an in camera review of the transcript, which counsel for Swing

1 First had marked as an exhibit.

2 Following an in camera review, and Mr. Ashton's testimony that he believes the transcript is
3 accurate, Johnson and Swing First were directed to brief the admissibility of the transcript.
4 Discovery was reopened to allow additional discovery prior to the briefing deadline. Counsel for
5 Swing First stated that he had provided copies of the transcript only to Mr. Ashton and counsel for
6 Johnson. Counsel for Johnson stated that he had provided the document to Johnson's employees
7 Brian Tompsett and Gary Larson, and to other Johnson attorneys. Counsel for Johnson was directed
8 not to disseminate the transcript further.

9 The parties were informed that the transcript would be treated as confidential and kept under
10 seal pending a ruling on its admissibility, and that parties who wished to submit briefs on the
11 transcript's admissibility could accomplish access to the transcript by entering into a confidentiality
12 agreement with Johnson.

13 Opening briefs on the admissibility of the transcript were filed by Johnson, Swing First,
14 RUCO and Staff. Reply briefs were filed by Johnson, Swing First, and RUCO.

15 Swing First, RUCO and Staff are of the opinion that the transcript is relevant in this case, Mr.
16 Larsen's statements in the transcript are not hearsay, the recording was legally obtained, and the
17 transcript, or at least portions of it, constitute admissible evidence. Johnson disagrees, arguing that
18 the transcript was illegally obtained as a result of blackmail or coercion or both, that it is irrelevant,
19 hearsay, not the best evidence, and that its admission would be contrary to good public policy.

20 On May 29, 2009, Swing First filed a Notice of Availability of Witness and Counsel,
21 indicating that counsel for Swing First would be unavailable from June 8 through June 19, 2009, and
22 that Swing First's witness David Ashton would be available to testify on July 9-10, 2009.

23 Johnson requests oral argument. Johnson further requests that if portions of the transcript are
24 deemed relevant and admissible, that only those select portions should be admitted, and not the entire
25 transcript; and that if a determination is made that the transcript or portions thereof are admissible,
26 that such a ruling be delayed for not less than ten days to allow Johnson to seek an interlocutory
27 appeal of the ruling, and that the transcript be kept under seal pending a final ruling regarding its
28 admissibility and any appeal has been concluded.

1 It was determined during the in camera review of the transcript that in conjunction with other
2 evidence already admitted into evidence during the hearing, the transcript raises issues that may
3 affect a determination on an appropriate level of test year revenues in this case, as well as other
4 concerns. For that reason, the timeclock for processing this matter was suspended effective April 27,
5 2009, pending further notice.

6 IT IS THEREFORE ORDERED that a procedural conference shall be held on **July 17, 2009,**
7 **at 1:30 p.m. or as soon thereafter as practicable,** at the Commission's Phoenix offices, Hearing
8 Room #1, for the purpose of taking oral argument on the issues raised in the parties' briefings on the
9 admissibility of the transcript.

10 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
11 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission
12 *pro hac vice*.

13 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
14 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
15 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances
16 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is
17 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the
18 Administrative Law Judge or the Commission.

19 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
20 Communications) continues to apply to this proceeding and shall remain in effect until the
21 Commission's Decision in this matter is final and non-appealable.

22 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended
23 pursuant to Rule 6(a) or (e) of the Rules of Civil Procedure.

24 ...

25 ...

26 ...

27 ...

28 ...

IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 30th day of June, 2009.


TEENA WOLFE
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered this 30th day of June, 2009 to:

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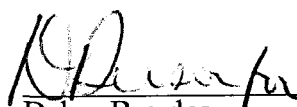
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By: 
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